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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

12 CHARLES VINCENT REED,
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14 Plaintiff,

14 v.

15 MICHAEL HUGHES,
16
17 Defendant.

Case No. C09-5677BHS/JRC

REPORT AND RECOMMENDATION

NOTED January 28, 2011

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19 This 42 U.S.C. § 1983 civil rights action has been referred to the undersigned Magistrate
20 Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR
21 1, MJR 3, and MJR 4.

22 Before the court is a motion for default for defendant Hughes (ECF No. 40). On
23 September 28, 2010, the Honorable Judge Settle entered an order dismissing part of this case
24 (ECF No. 34). Claims against defendant Hughes were not dismissed. After entry of that order
25 defendant Hughes had fourteen days to file an answer. See, Fed. R. Civ. P. 12 (a)(4)(B) No
26 answer was timely filed.


REPORT AND RECOMMENDATION- 1

1 On November 19, 2010 the court entered an Order to Show Cause as the action was not
2 being prosecuted (ECF No. 19). In response, on December 14, 2010, plaintiff moved for entry of
3 default against defendant Hughes (ECF No. 40). Two days later, on December 16, 2010,
4 defendant Hughes filed an answer (ECF No. 43).

5 As defendant Hughes has cured the default in this case by filing an answer, the court
6 recommends the motion for default be DENIED. The court has discretion not to enter default
7 when a defendant has cured the default and may have a meritorious defense. Mendoza v. Wight
8 Vineyard Management, 783 F.2d 941, 945-46 (9th Cir. 1986).

10 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen
11 (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6.
12 Failure to file objections will result in a waiver of de novo review by the District Court Judge. See
13 28 U.S.C. 636 (b)(1)(C). Accommodating the time limit imposed by Rule 72(b), the clerk is
14 directed to set the matter for consideration on **January 28, 2011**, as noted in the caption.

16 Dated this 3rd day of January, 2011.

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19 J. Richard Creatura
20 United States Magistrate Judge
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